

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
AUG 28 2012

CLERK

UNITED STATES OF AMERICA,

CR 12-30008

Plaintiff,

FACTUAL BASIS STATEMENT

vs.

DAVID ROSS LOW DOG,

Defendant.

The undersigned parties stipulate that the following facts are true and establish a factual basis for the plea in the action pursuant to Federal Rules of Criminal Procedure 11(b)(3):

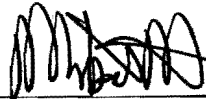
On or about the 9th day of July, 2011, at Eagle Butte, South Dakota, David Ross Low Dog engaged in a sexual act with Catherine Brings Horse, that is, contact between his penis and Catherine Brings Horse's vulva and anus, when Catherine Brings Horse was incapable of appraising the nature of the conduct and was physically incapable of declining participation in and communicating unwillingness to engage in a sexual act.

On the night of July 8, and into the early morning hours of July 9, 2011, Catherine Brings Horse, the Defendant, and others, were drinking at a home in Eagle Butte, South Dakota. Eventually, Catherine Brings Horse went to her home, House #715 of No Heart Housing, and fell asleep in her bed. While she

was sleeping, the Defendant came into Catherine's home, got into bed with her, and started to have sex with her. Catherine Brings Horse was asleep when the Defendant engaged in this sexual act, and therefore incapable of declining participation in or communicating unwillingness to engage in the sexual act.

David Ross Low Dog is an "Indian" under the provisions of 18 U.S.C. § 1153 in that he is an enrolled member of the Cheyenne River Sioux Tribe, enrollment number CRU-016077 and his degree of Native American Heritage is 1/2. The offense occurred in Eagle Butte, South Dakota, which is within the exterior boundaries of the Cheyenne River Sioux Tribe Indian Reservation. This location is "Indian country" within the provisions of 18 U.S.C. §§ 1151 and 1153.

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Date

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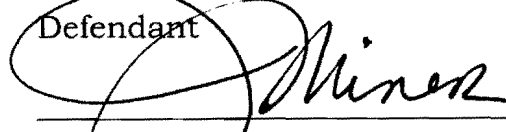
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Date



DAVID ROSS LOW DOG
Defendant



JANA MINER
Attorney for Defendant